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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,196

04/16/2007

David Woolfson

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EXAMINER

VO, HAI

ART UNIT

PAPER NUMBER

1794

NOTIFICATION DATE

DELIVERY MODE

12/21/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,196	<b>Applicant(s)</b> WOOLFSON ET AL.	
	<b>Examiner</b> Hai Vo	<b>Art Unit</b> 1794	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 October 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 19-39 is/are pending in the application.
- 4a) Of the above claim(s) 38 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 19-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/12/2006, 10/10/2007</u> .                                  | 6) <input type="checkbox"/> Other: _____                          |

***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 19-37 in the reply filed on 09/22/2009 is acknowledged. The traversal is on the ground(s) that the International Bureau maintained all the claims in a single application. This is not found persuasive because the recited structure set forth in claim 19 does not make a contribution over the prior art, unity of invention is lacking and restriction is appropriate under PCT Rule 13.2 (see rejections below).

The requirement is still deemed proper and is therefore made FINAL.

***Drawings***

2. The drawings are objected to because the lines and numbers of all of the drawings are not uniformly thick and well defined. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either

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"Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 19-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claims 19 and 37, the phrase "or the like" renders the claims indefinite because the claims include elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claims unascertainable. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States

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only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 19, 20, 22, 23, 27, 28 and 35 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Crye et al. (US 6,892,392). Crye teaches a personal body armor having hard armor plates on the front and back of the wear which extend between a left vest sections and a right vest section. Crye discloses a plurality of foam pads secured to the interior of the vest sections (abstract). The foam pad is formed from a viscoelastic foam which is enclosed with a 3D spacer fabric (column 3, lines 35-40). GB 2 353 048 will be used as an evidence showing that the 3D spacer fabric includes a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (figure 2). The spacer yarns form an air layer. It appears that Crye is using the same spacer fabric as the instant invention; therefore, it is the examiner's position that the stretching property, tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Accordingly, Crye anticipates or strongly suggests the claimed subject matter.

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8. Claims 19, 20, 22-28, and 33-36 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 20309794. DE'794 discloses a mattress comprising a fabric covering (3,4,5), a spacer fabric (8,6, 9) and a foam core 12 (drawing). The fabric covering contains a water vapor permeable layer 4 (page 7). This reads on the claimed vapor permeable outer cover. The foam core is a viscoelastic foam material (page 2). The spacer fabric having a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (pages 7 and 8). The spacer yarns form an air layer. The spacer fabric is of knitted polyester material. The spacer fabric has a thickness of 4.0 mm (page 8). The mattress cover can be removed and washed (page 10). This at least indicates that the foam core of the mattress is completely covered with the fabric covering and the spacer fabric. It appears that DE'794 is using the same spacer fabric as the instant invention; therefore, it is the examiner's position that the stretching property, tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Accordingly, DE'794 anticipates or strongly suggests the claimed subject matter.
9. Claims 31 and 32 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 20309794 as applied to claim 19 above, in view of Landvik et al. (US 6,159,574). DE'794 does not specifically disclose the mattress further comprising a supporting substrate laminated to the viscoelastic foam core.

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Landvik, however, discloses a mattress comprising a polyurethane foam layer 5 which is used in combination with a viscoelastic foam layer 6 as shown in figure 3. The polyurethane foam reads on the claimed support substrate. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a support substrate in combination with a foam core of DE'794 motivated by the desire to provide a mattress with desired support, thereby offering an increased comfort to the user.

10. Claims 19, 20, 22-28, and 31-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over GB 2 353 048 in view of Landvik et al. (US 6,159,574). GB '048 teaches a mattress comprising a foam core, a liquid impermeable layer and a spacer fabric provided on the liquid impermeable layer (abstract; and page 13, lines 25-30). The spacer fabric having a pair of spaced-apart knitted layers with spacer yarns extending between the knitted layers (figure 2). The spacer yarns form an air layer. The spacer fabric is of knitted polyester material (page 12, lines 5-10). The spacer fabric has a thickness of 4.5 mm (page 16, lines 18-20). The mattress is completely covered with a spacer fabric (page 15, lines 15-19). It appears that GB '048 is using the same spacer fabric as the instant invention; therefore, it is the examiner's position that the stretching property, tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. GB '048 does not specifically disclose the foam core formed from a viscoelastic foam. Landvik,

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however, discloses a mattress comprising an air permeable layer 8, a first viscoelastic foam layer 2, a second viscoelastic foam layer 4 and an air permeable layer 8 (figure 1). Lanvik teaches a mattress comprising a polyurethane foam layer 5 which is used in combination with the viscoelastic foam layer 6 as shown in figure 3. The polyurethane foam reads on the claimed support substrate. Lanvik also teaches an outer covering which is waterproof, vapor-permeable cover made of nylon fabric material coated with polyurethane film (column 3, lines 35-40). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute a viscoelastic foam material for the foam core of GB '048 motivated by the desire to provide a mattress with special pressure-relieving properties for preventing and healing of pressure sores. The viscoelastic foam tends to soften in response to body heat. The mattress subsequently molds to the form of the users body, allowing the pressure to be absorbed uniformly distributed evenly across the mattress so as to prevent and healing the pressure sores. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use a support substrate in combination with a foam core of GB '048 motivated by the desire to provide a mattress with desired support, thereby offering an increased comfort to the user. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a vapor permeable outer cover on the spacer fabric motivated by the



desire to allow the foam layer to breathe while preventing liquids from reaching the foam material.

11. Claims 19-31, and 34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hedley (US 2006/0188689) in view of GB 2 138 012. Hedley teaches a floor mat comprising a foam backing layer and a textile layer as shown in figure 2. The textile layer includes a spacer fabric having a first fabric layer, a second fabric layer and an intermediate pile layer that spaces the first and second fabric layers. The intermediate pile layer reads on the claimed air layer. The spacer fabric is of knitted polyester material (paragraphs 18 and 22). The spacer fabric has a thickness of 2 to 20 mm (paragraph 10). The foam backing is bonded to the textile layer by means of an adhesive material (paragraph 44). The floor mat further includes a nonwoven layer provided between the textile layer and the backing layer (paragraph 54). It appears that Hedley is using the same spacer fabric as the instant invention; therefore, it is the examiner's position that the stretching property, tensile strength would be inherently present like material has like property. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Hedley does not specifically disclose the foam backing layer formed from a viscoelastic foam. GB '012, however, discloses a floor mat comprising a viscoelastic foam made from polyurethane foam which has excellent sound absorbing capacity (abstract). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was

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made to substitute a viscoelastic foam material for the foam backing layer of Hedley motivated by the desire to provide a floor mat with excellent sound absorbing capacity without compromising the weight of the floor mat.

The recitation that the article is a “laminated body contact support” has not given patentable weight because it has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951).

### ***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hai Vo whose telephone number is (571) 272-1485. The examiner can normally be reached on Monday through Thursday, from 9:00 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on (571) 272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Hai Vo/  
Primary Examiner, Art Unit 1794